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(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

## आदेश पत्रक

**मामला क्रमांक** M.A. No. 621/ **सन्** 2006

..... **विरुद्ध** .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **APPELLANT INSURANCE** | The Oriental Insurance Company Limited, through its Branch Manager, Branch Office, Opposite Normal School (Now High Court), Bilaspur (C.G.) |
| | **VERSUS** | |
| | **RESPONDENTS CLAIMANTS** 1. | Kartikram Vishwakarma, S/o. Pudru Vishwakarma, aged 46 years |
| | 2. | Ashok Kumar S/o. Kartikram, aged 20 years. |
| | 3. | Sanjay Kumar S/o. Kartikram aged 18 years |
| | 4. | Ku. Meena D/o. Kartikram, aged 12 years |
| | 5. | Ku. Seema D/o. Kartikram, aged 12 years |
| | 6. | Ajay Kumar, S/o. Kartikram, aged 7 years |
| | 7. | Nandkumar, S/o. Kartikram, aged 4 years. |
| | | (Respondents No. 4 to 7 minor through their natural guardian father Kartikram/respondent No.1.) All r/o. Gram Gobripat, P.S. Kota, District Bilaspur (CG) |

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## आदेश पत्रक

मामला क्रमांक ...M.A..06..621/ सन् 2006

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित -2- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **DRIVER** (Against whom Criminal case was instituted) 8. | Ramkumar S/o. Dukhuram Sahu, aged 19 years, r/o. Gram Pataita, P.S. Kota, District Bilaspur (C.G.) |
| | **OWNER** 9. | Dukhuram Sahu, S/o. Bahuram Sahu, aged Not known, r/o. Gram Pataita, P.S. Kota, District Bilaspur (C.G.) |
| | **DRIVER** (New Driver arrayed for the first time in the Tribunal at the instance of the owner) 10. | Shivaji Uddin, D/o. Nizamuddin, By Caste-Muslim, r/o. Mungeli, District Bilaspur, Presently residing through Dukhuram Sahu, r/o. Gram Pataita, P.S. & Tehsil Kota, District Bilaspur (C.G.) |

**26.04.2007**

Shri Abhishek Sinha, counsel for the appellant.

Even in the second call none appears for the respondents. Though respondent Nos. 1 to 7 are served and respondents No. 8 to 10 are represented.

Heard the appelant.

Record of the Tribunal is perused.

This appeal is directed against the award dated 20.07.2005 passed by the Ninth Additional Motor Accident Claims Tribunal (FTC) Bilaspur in Claim Case No. 21/2005. whereby the Tribunal has awarded a sum of Rs. 25000/- to the applicants towards injuries sustained by Champa Bai, the wife of applicant No.1 and mother of applicant No.2 to 7, who

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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sustained injuries in the accident which occurred on 19.06.99 by the use of tractor belonging to non applicant/respondent No.9 Champa Bai died subsequently.

The findings recorded by the Tribunal is that the death of Champa Bai was not as a result of injuries sustained by her in the accident and the liability of the payment of compensation has been fastened upon the non-applicants No.1 to 3 (Appellant & respondent No. 8 & 9 herein) who have been held to be jointly and severally responsible for payment of compensation.

Learned counsel for the appellant submits that initially the claimant had filed the application showing the son of the owner of the vehicle namely, Ram Kumar/non-applicant No.1 as the driver of the tractor at the time of accident. However, subsequently the application was amended and non-applicant No.4/respondent No. 10 was shown as the driver at the time of accident. The matter was fixed for evidence of the appellant /non-applicant No.3 on 12.07.2005. The appellant paid due Process Fee for issuance of notices to the witnesses. However the same was not returned served or unserved. The Tribunal closed the opportunity of the appellant to adduce evidence and passed the impugned award fastening the liability upon the appellant with a finding that the appellant has failed to prove that the vehicle in question was being driven by the driver who

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -4- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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had no valid and effective license and as such there was no breach of policy condition.

I have heard counsel for the appellant.

I have perused the record of the Tribunal. From perusal of the order sheet dated 12.07.2005 it is observed that the matter was fixed for evidence of appellant/non applicant No.3 & counsel for the appellant prayed for further time to lead evidence as his witnesses did not turn up. It is also observed that in the earlier occasions also the matter was fixed for evidence of the appellant and the appellant had paid Process Fee for issuance of summons to the witnesses proposed to be examined by him. The Tribunal closed the opportunity of adducing evidence of the appellant on the ground that the matter is pending since long and the appellant was earlier directed to serve his witnesses through the Special Process Server but no steps were taken in this regard and the matter was fixed for final arguments and accordingly the impugned award has been passed.

Considering the facts and circumstances of the case and further considering that the appellant has not been afforded sufficient opportunity to adduce evidence, the instant appeal is allowed. The impugned award is set aside and the matter is remanded back to the concerned Claims Tribunal with a direction that the Tribunal shall give one more opportunity to

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —5— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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the appellant/non applicant No.3 to lead evidence and thereafter decide the matter afresh.

The appellant is also directed to take steps to procure the attendance of the witnesses it proposes to examine on its behalf. Further considering that the matter is pending since 1999 the Tribunal is directed to expedite the matter and conclude the same preferably within a period of three months from the date of receipt of this order. The appellant/Insurance Company shall not take any steps to recover the amount of compensation deposited and already withdrawn by the claimant.

In the meanwhile, office is directed to send back the record along with the copy of this order forthwith.

Sd/-
Dhirendra Mishra
Judge